

Agenda

D.C. OFFICE OF EMPLOYEE APPEALS (“OEA”) BOARD MEETING

Tuesday, March 7, 2017 at 11:00 a.m.

Location: 1100 4th Street, SW, Suite 380 (East Building)

Washington, DC 20024

I. Call to Order

II. Ascertainment of Quorum

III. Adoption of Agenda

IV. Minutes Reviewed from Previous Meeting

V. New Business

A. Public Comments on Motion to Expedite

B. Summary of Case

1. Paula Edmiston v. Metropolitan Police Department, OEA Matter No. 1601-0057-07R16– Employee requests that her Petition for Review on Remand be expedited given the length of time that her case has been on appeal before OEA.

C. Public Comments on Petitions for Review

D. Summary of Cases

1. Hassan Abdullah v. D.C. Public Schools, OEA Matter No. 1601-0126-13 – Employee worked as a teacher with Agency. On June 27, 2013, Agency issued a written notice to Employee informing him that he was being terminated after receiving a final rating of “Ineffective” under IMPACT during the 2012-2013 school year. IMPACT is Agency’s assessment system for school-based personnel.

On September 23, 2015, the Administrative Judge (“AJ”) issued her Initial Decision. She determined that because Agency acknowledged liability for Employee’s termination and reinstated Employee in August of 2015, the only issue she had to address was Employee’s back pay. The AJ found that the January 3, 2014 letter outlined that Agency offered Employee reinstatement with back pay. She held that Agency’s offer letter provided the same remedies that Employee would have been entitled to had he won his case with OEA. Moreover, the AJ provided that Employee had enough information and a reasonable amount of time to seek advice to decide if he would accept Agency’s offer. She reasoned that Agency extended its original offer deadline from January 13, 2014 until February 20, 2014. Further, she considered that the grievance Employee filed on January 27, 2014, to be a rejection of Agency’s initial offer of reinstatement and concluded that the parties were no longer engaged in the negotiations of the initial offer. Therefore, the AJ held that by not accepting reinstatement, Employee failed to mitigate his damages. Hence, she ruled that Agency was liable for back pay from Employee’s effective date of termination until February 20, 2014.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA’s Board on October 28, 2015. He argues that the AJ’s findings were not based on substantial evidence and that the Initial Decision was based on an erroneous interpretation of law. Employee also contends that because neither he nor Agency briefed the back pay issue, the AJ did not consider any arguments pertaining to the mitigation of damages. He asserts that although, the AJ alleged that the grievance he filed constituted a rejection of an offer of employment, he maintains that he filed the grievance to preserve his rights in the event that the negotiations did not conclude

favorably. He argues that the AJ made multiple legal errors; applied the wrong standard for mitigation factors; failed to analyze whether Agency made a “bona fide” offer of reinstatement; and wrongfully concluded that he rejected an offer of reinstatement by filing a grievance. Therefore, Employee requests that the Board reverse the AJ’s decision on damages; order that he be “made whole” through August 20, 2015; and remand the matter to the AJ for further proceedings and clarification of her order.

Agency filed a Response to Employee’s Petition for Review on December 2, 2015. It provides many of the same arguments previously stated in its brief. Accordingly, it requests that the Board dismiss Employee’s Petition for Review.

2. Samuel Murray v. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0032-14 – Employee worked as a Motor Vehicle Operator with Agency. On November 15, 2013, Agency issued a final notice of removal to Employee. The causes of action alleged were “any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: incompetence” and “any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious: inability to perform the essential functions of the job.”

The AJ issued an Initial Decision on September 18, 2015. He held that Agency’s argument under D.C. Official Code § 1-623.45 was defective because Agency acknowledged that Employee temporarily returned to work on November 5, 2012, which was within two years of the commencement of Employee’s Workers’ Compensation benefits. The AJ explained that because Employee returned to work within the two-year period and suffered a reoccurrence of injury, a new accrual was then initiated. Accordingly, he found that the two-year period in which Employee was given to return to work was reset in December of 2012 when he received medical treatment. Because the effective date of Employee’s termination was November 29, 2013, the AJ reasoned that Agency did not have cause to take adverse action against Employee. Accordingly, he reversed Agency’s decision to remove Employee and ordered that he be reinstated to the same or a comparable position.

Agency disagreed with the AJ’s decision and filed a Petition for Review with the OEA Board on October 23, 2015. It explains that the AJ erred when considering 7 DCMR § 139 which included a return to work provision. Agency asserts that Employee failed to show proof that he overcame his injury within the two-year period after the date of commencement of compensation payments, as required by D.C. Official Code § 1-623.45. Therefore, it requests that the OEA Board grant its Petition for Review.

3. Tanya Wright-Nelson v. D.C. Public Schools, OEA Matter No. 1601-0210-12– Employee worked as a Teacher with Agency. On July 27, 2012, Agency issued a notice of termination to Employee. The notice provided that under IMPACT, Agency’s Effectiveness Assessment System for School-Based Personnel, employees who receive a Minimally Effective rating for two consecutive years were subject to separation. Employee was rated Minimally Effective for the 2010-2011 and 2011-2012 school years. As a result, Employee was terminated effective August 10, 2012.

On August 21, 2015, the AJ issued her Initial Decision. As it relates to the post-observation conference, the AJ found that Agency attempted to meet with Employee to conduct a post-observation conference within the fifteen-day deadline. However, Employee called in sick on the day they were scheduled to meet. The AJ explained that Agency attempted to reschedule the conference on November 21, 2011, which was after the fifteen-day deadline; however, Employee was unavailable. Therefore, she concluded that Agency’s failure to comply with the

process was not its own doing, but it was the result of Employee's absence. Accordingly, she determined that Agency's non-compliance was justified.

Additionally, the AJ ruled that Employee did not challenge the scores she received in any of the 2010-2011 and 2011-2012 IMPACT evaluation categories. She found that it was within the Principal's discretion to rate Employee's performance. Moreover, the AJ explained that Employee failed to provide specific evidence in support of the assertion that she worked in a hostile environment. She reasoned that such a complaint was considered a grievance, and OEA no longer had jurisdiction over grievance appeals. The AJ concluded that Agency adhered to the IMPACT process and had cause to terminate Employee due to her Minimally Effective ratings for the 2010-2011 and 2011-2012 school years. Accordingly, Agency's removal action was upheld.

On September 25, 2015, Employee filed her Petition for Review. She states that the AJ erred in ruling that Agency complied with the timing of the post-observation conference. Employee argued that there was no definitive appointment set for the meeting. She explains that on November 18, 2011, she notified the school that she was ill and would not be able to make it to work. She claims that the Principal provided her with less than five hours of notice for the post-observation conference. Employee also contends that the Principal did not take any action to have a meeting scheduled on November 21, 2011. Additionally, she notes that the Master Educator was not impartial. Accordingly, Employee requests that the AJ reconsider its decision and conduct a hearing.

4. Willie Porter v. Department of Mental Health, OEA Matter No. 1601-0046-12R15– Employee worked as a Psychiatric Nurse with Agency. On July 28, 2011, Agency issued a Notice of Final Decision to Employee informing him that he would be removed from his position. Employee was charged with any knowing or material misrepresentation on an employment application.

The AJ issued his Initial Decision on December 24, 2013. He found that Employee submitted an application on September 16, 2010, and then submitted another application on October 6, 2010. The AJ provided that although Employee's October 2010 application indicated that he resigned from Walter Reed, his Standard Form 50 ("SF-50") indicated that he was terminated from his position for cause. Moreover, the AJ found that Employee did not offer any evidence to contradict the accuracy of the SF-50, nor did he prove that his resignation letter was received by Walter Reed. As a result, he ruled that Agency's adverse action was taken for cause, and its penalty was appropriate. Accordingly, the action was upheld.

Employee filed a Petition for Review with the OEA Board on February 4, 2014. He requested that the final decision by OEA be delayed until the Merit Systems Protection Board could provide new and material evidence from his personnel file to prove that he was unaware of Walter Reed's adverse action charges. In opposition to the Petition for Review, Agency submitted that the petition should be denied because the Initial Decision was supported by substantial evidence, and Employee did not provide a reason for the Board to grant his Petition for Review.

5. Samson Adeboye v. Metropolitan Police Department, OEA Matter No. 2401-0024-12– Employee worked as a Staff Assistant with Agency. On September 14, 2011, Agency informed Employee that he was being separated from his position pursuant to a Reduction-in-Force ("RIF"). The effective date of his termination was October 14, 2011.

An Initial Decision was issued on September 15, 2015. The AJ first held that D.C. Official Code § 1-624.02, and not the Abolishment Act, was the appropriate statute to utilize in evaluating the instant RIF because it was not conducted for budgetary purposes. He determined

that Agency obtained the required signatures for approving the RIF and concluded that the signatures were authentic, timely, and properly procured. Additionally, the AJ provided that at the time of the RIF, Employee held the position of Staff Assistant, 0301-09-04-N, as evidenced by his SF-50. The AJ found that Employee's pay grade/step was listed inconsistently on some of Agency's documents. However, he noted that an employee's competitive level was determined according to the title, series, and grade of the position, and not the pay grade step. The AJ, therefore, determined that Employee was placed in the correct competitive level.

Regarding the lateral competition requirement, the AJ stated that Employee was the sole occupant of the Staff Assistant position that was identified for abolishment. He further explained that when an entire competitive level is abolished pursuant to a RIF, or when a separated employee is the only member in his or her competitive level, the statutory provision affording him or her one round of lateral competition is inapplicable. Thus, the AJ concluded that Employee was separated from service under the RIF in accordance with all applicable rules, laws, and regulations.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA's Board on September 29, 2015. He argues that the Initial Decision was not based on substantial evidence because the AJ failed to address all of the issues raised in his April 3, 2015 legal brief and during the subsequent evidentiary hearing. Specifically, Employee asserts that the Initial Decision did not address his claim that Agency failed to receive the necessary approvals or concurrence for the RIF. He also argues that Agency utilized inaccurate and incomplete documents in the realignment plan that formed the basis for the RIF. In addition, Employee states the AJ did not address his argument that Agency was required to consider job sharing and reduced hours prior to implementing the RIF. He further believes that Agency was required to place him on its priority re-employment list, as required by D.C. Official Code § 1-624.02(a)(3). Finally, he argues that the Initial Decision was based on an erroneous interpretation of law or statute because he was placed in the incorrect competitive level. Therefore, Employee asks this Board to reverse the Initial Decision, or remand the case to the AJ for the purpose of addressing the aforementioned issues.

Agency filed an Answer to the Petition for Review on November 3, 2015. It maintains that the AJ considered all of the claims that Employee raised during the course of this appeal. Agency further argues that the AJ correctly held that Employee's competitive level for purposes of the RIF was a Staff Assistant. Agency, therefore, submits that the Initial Decision was based on substantial evidence in the record. Consequently, it requests that Employee's Petition for Review be denied.

6. Darryl Boone v. Metropolitan Police Department, OEA Matter No. 2401-0019-12– Employee worked as a Computer Specialist with Agency. On September 14, 2011, Agency informed Employee that he was being separated from his position pursuant to a RIF.

An Initial Decision was issued on September 15, 2015. The AJ first held that D.C. Official Code § 1-624.02, and not the Abolishment Act, was the appropriate statute to utilize in evaluating the instant RIF because it was not conducted for budgetary purposes. He determined that Agency obtained the required signatures for approving the RIF and concluded that the signatures were authentic, timely, and properly procured. Additionally, the AJ provided that at the time of the RIF, Employee held the position of Computer Specialist, DS-0334-13-07-N, as evidenced by his SF-50. The AJ found that Employee's pay grade/step was listed inconsistently on some of Agency's documents. However, he noted that an employee's competitive level was determined according to the title, series, and grade of the position, and not the pay grade step. The AJ, therefore, determined that Employee was placed in the correct competitive level.

Regarding the lateral competition requirement, the AJ stated that Employee was the sole occupant of the Computer Specialist position that was identified for abolishment. He further explained that when an entire competitive level is abolished pursuant to a RIF, or when a separated employee is the only member in his or her competitive level, the statutory provision affording him or her one round of lateral competition is inapplicable. Thus, the AJ concluded that Employee was separated from service under the RIF in accordance with all applicable rules, laws, and regulations.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA's Board on October 20, 2015. He argues that the Initial Decision was not based on substantial evidence because the AJ failed to address all of the issues raised in his April 3, 2015 legal brief and during the subsequent evidentiary hearing. Specifically, Employee asserts that the Initial Decision did not address his claim that Agency failed to receive the necessary approvals or concurrence for the RIF. He also argues that Agency utilized inaccurate and incomplete documents in the realignment plan which formed the basis for the RIF. In addition, Employee states the AJ did not address his argument that Agency was required to consider job sharing and reduced hours prior to implementing the RIF. Finally, Employee argues that the Initial Decision was based on an erroneous interpretation of law or statute because he was placed in the incorrect competitive level. Therefore, he asks this Board to reverse the Initial Decision, or remand the case to the AJ for the purpose of addressing the aforementioned issues.

Agency filed an Answer to the Petition for Review on November 24, 2015. It maintains that the AJ considered all of the claims that were raised during the course of this appeal and correctly concluded that it submitted the appropriate forms to conduct the RIF. It further argues that the AJ correctly held that Employee's competitive level for purposes of the RIF was a Computer Specialist. Agency, therefore, submits that the Initial Decision was based on substantial evidence in the record. Consequently, it requests that Employee's Petition for Review be denied.

7. Zack Gamble v. Metropolitan Police Department, OEA Matter No. 1601-0044-15 – Employee worked as a Computer Specialist with Agency. On September 14, 2011, Agency notified Employee that he was being separated from his position pursuant to a RIF.

An Initial Decision was issued on August 31, 2015. The AJ first held that D.C. Official Code § 1-624.02, and not the Abolishment Act was the appropriate statute to utilize in evaluating the instant RIF because it was not conducted for budgetary purposes. He further provided that Agency obtained the required signatures for approving the RIF and concluded that the signatures were authentic, timely, and properly procured. Additionally, the AJ provided that at the time of the RIF, Employee held the position of Computer Specialist DS-0334-12-07-N, as evidenced by his SF-50. The AJ found that Employee's pay grade/step was listed inconsistently on some of Agency's documents; however, he noted that the competitive level was determined according to the title, series, and grade of the position, not the pay grade step. The AJ, therefore, concluded that Employee was placed in the correct competitive level.

Regarding the lateral competition requirement, the AJ provided that two Computer Specialist positions were identified for abolishment. Employee encumbered one of the two positions within his competitive level that were identified for abolishment. Although Employee was entitled to compete for retention, the AJ stated that both positions were abolished; thus, there was no one remaining with whom Employee could compete. In his analysis, the AJ noted that OEA has consistently held that when an entire competitive level is abolished pursuant to a RIF, or when a separated employee is the only member of his or her competitive level, then the statutory provision affording the employee one round of lateral competition is inapplicable. After reviewing the documentary and testimonial evidence presented by the parties, the AJ

concluded that Employee was separated from service under the RIF in accordance with all applicable rules, laws, and regulations. He also held that Agency provided Employee with at least thirty days' written notice prior to the effective date of the RIF. Consequently, Agency's RIF action was upheld.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA's Board on October 5, 2015. He argues that the AJ failed to address all of the issues raised in his April 3, 2015 legal brief and during the subsequent evidentiary hearing. Specifically, Employee asserts that the Initial Decision did not address his claim that Agency utilized inaccurate and incomplete documents in the realignment plan which formed the basis for the RIF. He further states that the AJ did not address his arguments pertinent to the issues of job sharing rights, and reduced hours. In addition, Employee believes that Agency failed to timely place him on the priority re-employment list as required by D.C. Code § 1-624.02(a)(3). Finally, he argues that the Initial Decision was based on an erroneous interpretation of statute and that the AJ's findings were not based on substantial evidence in the record. Therefore, he asks this Board to reverse the Initial Decision, or remand the case to the AJ for the purpose of addressing the aforementioned issues.

Agency filed an Answer to the Petition for Review on November 9, 2015. It maintains that the AJ considered all of the claims that were raised during the course of this appeal, including issues regarding obtaining the requisite RIF signatures and the realignment documents. It further argues that the AJ correctly held that Employee's competitive level for purposes of the RIF was a Computer Specialist. Agency, therefore, submits that the Initial Decision was based on substantial evidence in the record. Consequently, it requests that Employee's Petition for Review be denied.

8. Brenda Toyer Metropolitan Police Department, OEA Matter No. J-0008-15– Employee worked as a Computer Clerk with Agency. On September 14, 2011, Agency notified Employee that she was being separated from her position pursuant to a RIF. The effective date of her termination was October 14, 2011.

An Initial Decision was issued on September 16, 2015. The AJ first held that D.C. Official Code § 1-624.02, and not the Abolishment Act was the appropriate statute to utilize in evaluating the instant RIF because it was not conducted for budgetary purposes. He further stated that Agency obtained the required signatures for approving the RIF and concluded that the signatures were authentic, timely, and properly procured. Additionally, the AJ held that Employee's official position of record at the time of the RIF was a Computer Clerk, DS-0303-05-04-N, as evidenced by her Official SF-50. The AJ found that Employee's pay grade/step was listed inconsistently on some of Agency's documents. However, he noted that an employee's competitive level was determined according the title, series, and grade of the position, not the pay grade step.

Regarding the lateral competition requirement, the AJ stated that Employee the sole occupant of the Computer Clerk position that was identified for abolishment. He further explained that when an entire competitive level is abolished pursuant to a RIF, or when a separated employee is the only member their competitive level, the statutory provision affording him or her one round of lateral competition is inapplicable. After reviewing the documentary and testimonial evidence presented by the parties, the AJ concluded that Employee was separated from service under the RIF in accordance with all applicable rules, laws, and regulations. He also held that Agency provided Employee with at least thirty days' written notice prior to the effective date of the RIF. Consequently, Agency's RIF action was upheld.

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA's Board on October 20, 2015. She argues that the Initial Decision was not based on substantial evidence because it did not address all the issues of law and fact raised in her legal brief and during the subsequent evidentiary hearing. Specifically, Employee asserts that the AJ failed to address her claims that Agency did not receive the necessary approvals or concurrence for the RIF. Next, she states that the AJ neglected to address her argument that Agency utilized inaccurate and incomplete documents in the realignment plan which formed the basis for the RIF. In addition, Employee states that the AJ did not address the issues of job sharing or reduced hours rights prior to implementing the RIF. Finally, Employee asserts that the Initial Decision was based on an erroneous interpretation of statute because she was placed in the incorrect competitive level. Therefore, she asks this Board to reverse the Initial Decision, or remand the case to the AJ for the purpose of addressing the aforementioned issues.

Agency filed an Answer to the Petition for Review on November 24, 2015. It maintains that the AJ considered all of the claims that were raised during the course of this appeal, including issues regarding obtaining the requisite RIF signatures and the realignment documents. It further argues that the AJ correctly held that she was placed in the correct competitive level. Agency, therefore, submits that the Initial Decision was based on substantial evidence in the record. Consequently, it requests that Employee's Petition for Review be denied.

E. Deliberations – This portion of the meeting will be closed to the public for deliberations in accordance with D.C. Official Code § 2-575(b)(13).

F. Open Portion Resumes

G. Final Votes on Cases

H. Public Comments

VI. Adjournment